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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

DPF INVESTORS; DAVID A. PERSKY, in his
capacity as a General Partner of DPF Investors;
MARLENE PERSKY, in her capacity as a General
Partner of DPF Investors, and in her capacity as
Custodian for J.P. and L.P., Trustee of the Persky
Family Trust, Trustee of the David A. Persky Trust
for Minors for the benefit of L.P., Trustee of the
David A. Persky Trust for Minors for the benefit of
J.P., all of which are General Partners of DPF

Adv. Pro. No. 10-04475 (SMB)

Investors; PERSKY FAMILY TRUST; DAVID A. PERSKY TRUST FOR MINORS FOR THE BENEFIT OF L.P.; DAVID A. PERSKY TRUST FOR MINORS FOR THE BENEFIT OF J.P.; J.P.; and L.P.,

Defendants.

NOTICE OF MEDIATOR SELECTION

On November 10, 2010, this Court entered the Order (1) Establishing Litigation Case Management Procedures for Avoidance Actions and (2) Amending the February 16, 2010 Protective Order (the “Order”)¹ [Adv. Pro. No. 08-01789 (SMB), Dkt. No. 3141]. Pursuant to the Notice of Applicability filed by Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff individually (“Madoff”), in this Adversary Proceeding on November 30, 2010 [Dkt. No. 2], the Order and the avoidance procedures contained therein (the “Avoidance Procedures”) are applicable to the instant matter.

On October 3, 2011 Defendants filed a motion to dismiss this adversary proceeding [Dkt. No. 13] pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable by Bankruptcy Rule 7012 (a “Rule 12(b)(6) Motion”).

On May 13, 2014, the Trustee filed with this Court the Notice of Mediation Referral [Dkt. No. 33], pursuant to Paragraph 2D of the Avoidance Procedures, which specifies that upon the filing of a Rule 12(b)(6) Motion, the issues raised in such motion, together with the issues raised in the Complaint, are immediately referred to mediation. Avoidance Procedures, ¶2D.

Through this Notice of Mediator Selection, and pursuant to the Avoidance Procedures and the Mediation Order, made applicable to the Trustee and Defendants (collectively, the

“Parties”) upon the filing of the Notice of Mediation Referral, the Parties hereby mutually select from the Mediation Register Jeffrey N. Rich, from the law firm of Rich Michaelson Magaliff Moser, LLP, to act as Mediator in this matter. The Parties further agree to contact Mr. Rich as soon as practicable after this Notice of Mediator Selection is filed with the Court.

The Parties further agree that no person shall act as Mediator if that person, or that person’s law firm, currently represents a party with respect to the BLMIS proceeding, unless the Parties provide prior written consent that the person may act as Mediator.

Pursuant to the Avoidance Procedures, the Parties agree that this mediation will conclude within 120 days from the date that this Notice of Mediator Selection is filed, unless that deadline is extended by mutual consent of the Parties and the Mediator.

Dated: New York, New York

May 16, 2014

¹ All terms not defined herein shall be given the meaning ascribed to them in the Order.

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